vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1469 OF 2007

Shri Pralhad Baburao Satale ... Petitioner

V/s.

Shri Ramchandra Shamrao Desai & Anr. ... Respondent

Mr.S.S. Pakale with Mr.S.Manale for Petitioner
Mr.M.S. Topkar for Respondent No.1
Ms.P.S. Cardozo, AGP, for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 24, 2007**

P.C.:

. The petition challenges the award of the Labour Court whereby the Labour Court has directed the petitioner to reinstate the respondent workman with continuity of service and 60% of the backwages calculated at the minimum rates of wages payable. The petitioners have also been directed to pay costs of Rs.1,500/-.

2. During the pendency of this writ petition, the workman has been reinstated and is today working with the petitioner.

3. Four submissions have been advanced on behalf of the petitioner: (i) that the workman was not employed with the petitioner for the period that he claimed but was in employment for a period of 4 months; (ii) that

the workman had abandoned his service and that the Petitioner was always willing to continue him in service; (iii) that the backwages ought not to have been awarded to the respondent workman since it was he who had abandoned his duties; and (iv) that the respondent workman had a paan shop from where he earned in excess of the amount that he was drawing with the petitioner.

4. The Labour Court has disbelieved the evidence of the petitioner that the respondent workman was working only for a period of four months. In paragraphs 10 and 11, the Labour Court has observed that the muster rolls and wage registers for the period from 1986 onwards were not produced by the petitioner although an application was made for production of documents by the respondent. The Labour Court had allowed the application. The contention raised before the Court for not producing the muster roll was that no muster roll was maintained as there was no such practice in Ichalkaranji. The Labour Court has considered the fact that under the Bombay Shops and Establishments Act which was applicable, muster rolls and wage registers are to be maintained. The Labour Court also observed that the evidence of the petitioner's witness Banabai Bapu Patil indicated that the petitioner did in fact maintain a wage register and a muster roll and that attendance cards were issued to

the workers. The Labour Court, therefore, has rightly disbelieved the petitioner's evidence and has drawn an adverse inference. The submission that it was for the workman to prove that he had completed 240 days in view of the judgment of the Supreme Court in the case of *Range Forest Officer v/s.S.T. Hadimani* reported in **AIR 2002 SC 1147** is of no avail to the petitioner. Once the Respondent had discharged the burden indicating that he was employed and he had sought production of documents which were in the custody of the employer, the employer ought to have produced these documents.

5. As regards the contention that the workman had not been terminated from service and had in fact abandoned the service, the Labour Court in para 10 of the award has discussed the issue and held that although it was contended by the petitioner that he had offered the first party employment before the Conciliation officer, the record of the conciliation proceedings demonstrated that such an offer was not made as no reply was filed by the Petitioner before the Conciliation Officer. This fact has been admitted by the petitioner in his evidence. The application for a direction to the respondent workman to report for duty was filed by the Petitioner for the first time before the Court in 2005. Therefore, this submission of the learned advocate for the petitioner is unsustainable.

6. The Petitioner’s case of abandonment has been rightly disbelieved by the Labour Court. This is a conclusion drawn by the Labour Court on a consideration of the evidence led before it. In my view, there is no perversity in the findings arrived at by the Labour Court.

7. The next submission regarding the Paan shop has also been considered by the Labour Court, albeit not in so many words, as only 60% of the backwages has been awarded. Therefore, in my opinion, no interference is required with the award.

8. In view of this, petition is rejected.